

REMARKS

In the Office Action, the Examiner finally rejected Claims 1 and 11 under 35 U.S.C. §112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which is regarded as the invention and for various informalities. In response, Applicants have amended Claims 1 and 11 to more particularly point out and distinctly claim the subject matter and to correct the various informalities. Applicants have also amended Claims 9, 10, 16 and 18 to correct various informalities. No new matter has been added by these amendments. Therefore, Applicants respectfully request removal of this ground of rejection.

The Examiner then rejected Claims 1-3, 5, 7-13 and 16-18 under 35 U.S.C. 103(a) as being unpatentable over Scheinert et al. (U.S. Pat. Pub. 2004/0204097, hereinafter “Scheinert”) in view of VOCAL Technologies Ltd. (a description of a V.34 modem, hereinafter “VOCAL”). In response, Applicants have amended Claims 1 and 11 and, therefore, respectfully request reconsideration and removal of this ground of rejection.

More specifically, Applicants aver that merely by combining the two references, that which Applicants claim as the invention would not be created. In this respect, the VOCAL reference does not add anything different to the teaching of Scheinert because VOCAL only discloses V.34 modem technology. This technology has already been incorporated into Scheinert. *See* Scheinert at paragraph 85. Therefore, VOCAL does not allow the modification of Scheinert. Trying to modify Scheinert with the disclosure of VOCAL would not create anything other than Scheinert.

Further, Applicants respectfully suggest that the Examiner has misconstrued the disclosure of Scheinert. Scheinert is designed to be used when a signal from a large communications tower (termed a base station by Scheinert) is not available. *See* Scheinert at paragraphs 8-9. Additionally, and as noted above, Scheinert discloses a method whereby a user of a cell phone can receive a strong cell phone signal where strong cell phone signals are otherwise not to be found (e.g., inside a building, at a rural location, etc.). *See* Scheinert at paragraph 8. Scheinert accomplishes this by teaching that, instead of having one large cell tower in an area, an individual user can obtain a miniature cell tower and attach it to, e.g., a cable modem. *See* Scheinert at paragraphs 9-16. The cell phone then only needs to receive a signal from the nearby miniature cell

tower. The miniature cell tower then sends the information via the Internet to the rest of the cellular network and normal phone operation commences. Overall, Scheinert requires the cell phone network to work. *See* Scheinert at Abstract and paragraphs 1-2. Scheinert also requires that a user have a cell phone service.

In contrast, the present claimed invention as amended is designed to be used when there is a large communications tower in the area. To more particularly point out this limitation, Applicants have amended the claims to recite that the base/repeater station must be a shared, public tower. This is inherently supported by the specification as filed. *See* Specification at, *inter alia*, page 2, lines 3-13 (discussing that two-way radio networking is used by the present invention and also discussing that two-way radio networking uses signaling that generally utilizes large, communal (i.e., shared and public) towers). Additionally, the claims of the present invention as amended do not require cell networks to work whatsoever. Instead, a first two-way radio is connected with a shared, public base/repeater station. This base station is then linked directly with a second base/repeater station (the target), the link being created across the Internet. A second two-way radio connected to this second base station can then communicate back-and-forth with the first two-way radio. No cell network is required.

The only similarity between Scheinert and the presently claimed invention is that both utilize the Internet to transmit communications. In contrast, the differences are numerous. For example, Scheinert requires a cellular network to operate; the present invention does not require such a network. Scheinert requires a user to already have a communication service of some time (e.g., high-speed internet or existing land-line); the present invention does not. Scheinert requires a user to have Internet access immediately available; the present invention does not require the user to have any Internet access whatsoever. Scheinert requires the user to obtain an additional piece of hardware (in the form of a miniature cell tower); the present claimed invention requires no additional hardware at the user-level.

Therefore, because merely by combining the two references would not result in the modification of the Scheinert reference, because Scheinert requires the use of a cellular network, and because Scheinert is designed to be used when no large

communications tower is available, it would not be obvious to combine the two references in order to create that which Applicants claim as the invention.

Furthermore, Scheinert teaches away from the present claimed invention for the reasons discussed above. That is, because Scheinert teaches that it is to be used when there is no large communications tower in the area, the reference teaches away from any invention designed to be used when there is a large communications tower (i.e., a shared, public base/repeater station) in the area.

Therefore, because the references as combined do not teach anything new, and because that which Applicants claim as the invention still would not be created even if the references *did* teach something new (which they do not), Applicants respectfully request removal of this ground of rejection.

The Examiner then rejected Claims 4, 6 and 14-15 under 35 U.S.C. 103(a) as being unpatentable over Scheinert and VOCAL as applied to Claims 1 and 11, and further in view of the Admitted Prior Art. Applicants respectfully request reconsideration and removal of this ground of rejection.

More specifically, Applicants aver that the above-identified amendments and arguments prove that the present claimed invention would not be created by the combination of the first two references and the Admitted Prior Art. Most importantly, and as noted above, the Scheinert and VOCAL references cannot be combined to teach communications outside the cellular network, and the Admitted Prior Art does not cure this deficiency. If the Examiner were to argue that the Admitted Prior Art somehow does cure this deficiency by teaching the use of communications outside the cellular network, then the Admitted Prior Art would not properly be combinable with Scheinert because Scheinert teaches away from any communication system that does not utilize the cellular network.

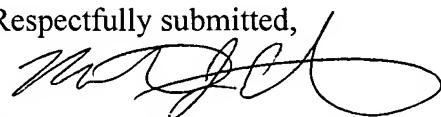
Furthermore, the combination of Scheinert and VOCAL does not teach using a shared, public base/repeater station (as claimed by the present invention as amended). The addition of the Admitted Prior Art does not cure this deficiency, either.

In addition, Applicants have also added new Claim 19 which is directed to the same general subject matter as Claim 1 but recites that the system can only be used outside of a cellular network. As such, Claim 19 finds support in the same locations in

the specification as Claim 1, and also finds support at, *inter alia*, page 6, lines 3-19 (discussing various methods of communication that can be used with the present invention). *See MPEP §2173.05(i)* (noting that “Any negative limitation or exclusionary proviso must have basis in the original disclosure. If alternative elements are positively recited in the specification, they may be explicitly excluded in the claims.”) In the instant case, because the specification stated that “any suitable protocol known to those skilled in the art” may be used, cellular networks were positively recited. Therefore, cellular networks may appropriately be recited as a negative limitation.)

Based on the above, Applicants respectfully submit that the claims of the present invention are in proper form for allowance. Favorable consideration and early allowance are therefore respectfully requested and earnestly solicited.

Respectfully submitted,



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